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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-089-23485

Office: PHILADELPHIA

Date:

SEP 08 2009

IN RE:

Applicant:

APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a; Application for Temporary Residence (Regular Form I-687) (in addition to I-698).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Field Office Director, Philadelphia, Pennsylvania, and the applicant's temporary residence was terminated. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to submit sufficient evidence to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988. The district director further determined that the applicant had been convicted of a felony. The district director concluded that the applicant was ineligible to adjust from temporary to permanent residence pursuant to 8 C.F.R. § 245a.3(c)(1), and terminated the applicant's temporary residence.

The record reveals that on January 1, 2002 the applicant was arrested in Camden, New Jersey for aggravated assault pursuant to New Jersey Statute (NJS) 2C:12-1b(7). The record contains the certified indictment and judgment of conviction for [REDACTED] issued by the Camden County Superior Court. The record reveals that the applicant pled guilty on December 16, 2002 and was sentenced to probation for one year, ordered to comply with alcohol and domestic violence counseling and assessed fees. The director noted that since the applicant was convicted of a felony, he was ineligible for adjustment from temporary to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1).

On appeal, the applicant does not assert that his conviction was not a felony. Rather, he asserts that his inadmissibility should be waived pursuant to 212(h) of the Immigration and Naturalization Act (the Act). He cites extreme hardship to his immediate relatives should he be deported.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, *and is otherwise eligible for adjustment of status under this section.* 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden and therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.